

## REMARKS

### I. STATUS OF THE CLAIMS

Claims 1-50, 82, 83, 94, 95, 107, and 108 were pending in this application. Claims 51-81, 84-93, 96-106, and 109-114 were previously withdrawn following the previous restriction requirement. Applicant herein reinstates claims 63 and 64. Claims 1-50, 63, 64, 82, 83, 94, 95, 107, and 108 will be pending and at issue.

### II. ELECTION/RESTRICTION REQUIREMENT

In the April 9, 2008 Office Action the Examiner required further definition of the elected compound. The Examiner stated:

Further definition of the elected compound is now sought. What is required (under 35 U.S.C. § 121) is an election of a fully defined lipopeptide that falls within the scope of claim 1 and which is consistent with the previous election. It may be that the elected compound will conform to the following formula wherein “Th” is the peptide of SEQ ID NO:1, “B” is the peptide of SEQ ID NO: 2, R<sub>2</sub> and R<sub>3</sub> are both palmitic acid, and “Y” is the dipeptide Ser-Ser. If not, applicants can elect some other structure.

In response, Applicant elects with traverse the formula wherein “Th” is the peptide of SEQ ID NO:1, “B” is the peptide of SEQ ID NO: 2, R<sub>2</sub> and R<sub>3</sub> are both palmitic acid, and “Y” is the dipeptide Ser-Ser.

Applicant notes that claims 1-24, 30, 32-34, 37-44, 49-50, 63-64, and 82-83 are readable on the above noted species elections.

In the previous Office Action, the Examiner group claims 63 and 64 with Group II drawn to methods of making a lipopeptide. Claims 63 and 64 are composition claims (A composition comprising the lipopeptide claim 1 and a pharmaceutically acceptable excipient or diluent; The

composition of claim 63 further comprising a biologic response modifier (BRM)) and believes that claims 63 and 64 should be joined with elected Group I.

Applicant previously withdrew without prejudice the non-elected claims drawn to methods (Groups II-V.). Applicant understands that the non-elected claims will be considered for rejoinder should the elected claims be found allowable. In addition, Applicant reserve the right to introduce non-elected subject matter in this or a separate continuation or divisional application.

### **III. Traversal**

Applicant traverses the Restriction Requirement as the Examiner continues to follow restriction practice under 35 U.S. C. §121 rather than unity of invention practice. The instant application was submitted under 35 U.S.C. §371 and is therefore subject to unity of invention practice as described in MPEP Chapter 1800, and not restriction practice as described in MPEP Chapter 800. When making a lack of unity of invention requirement, the Examiner must (1) list the different groups of claims and (2) explain why each group lacks unity with each other group (i.e., why there is no single general inventive concept) specifically describing the unique special technical feature in each group. In the instant application, the Examiner has not explained why each group lacks unity with each other group, i.e., has not explained why there is no single general inventive concept.

The claims in the instant application are linked as to form a single general inventive concept because there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature, e.g., a lipopeptide as described in claim 1. This special technical features defines the contribution which each claimed invention, considered as a whole, makes over the prior art.

In the April 9, 2009 Office Action the Examiner “asserts that there exists at least one embodiment within the scope of claim that can be rejected as obvious over the prior art.” However the Examiner did not explain why there is no single general inventive concept as required under unity of invention practice nor provide evidence to support this proposition. Therefore Applicant traverses the restriction requirement.

#### IV. CONCLUSION

Consideration of the claims is respectfully requested, and a notice of allowance is earnestly solicited. If the Examiner has any questions concerning this Response, the Examiner is invited to telephone Applicants' representative at (415) 875-2316.

Respectfully submitted,  
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